

1 Robert L. Hyde (SBN: 227183)
2 bob@westcoastlitigation.com
3 Joshua B. Swigart (SBN: 225557)
4 josh@westcoastlitigation.com
5 **HYDE & SWIGART**
6 411 Camino Del Rio South, Suite 301
7 San Diego, CA 92108-3551
8 Telephone: (619) 233-7770
9 Facsimile: (619) 297-1022

10 Attorneys for Plaintiff
11 Vian Charbonneau

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13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**

15 **VIAN CHARBONNEAU,**
16 **PLAINTIFF,**
17 **V.**
18 **THE PATRICK M. CORBETT**
19 **LAW OFFICE,**
20 **DEFENDANT.**

21 **Case No.: C 07-05252 JCS**
22 **REQUESTS TO APPEAR**
23 **TELEPHONICALLY**
24 **AND DECLARATION OF**
25 **JOSHUA B. SWIGART IN**
26 **RESPONSE TO THE COURT'S**
27 **ORDER TO SHOW CAUSE**

28 **HON. JOSEPH C. SPERO**

Date: 2/15/08
Time: 1:15 P.M.

10 **TO THE HONORABLE COURT:**

11 Plaintiff's counsel hereby request that Plaintiff's counsel be permitted
12 to appear at the Case Management Conference and Order to Show Cause
13 scheduled for February 15, 2008 at 1:15 p.m. in the above-entitled court located at
14 450 Golden Gate Avenue, San Francisco, California. Good cause exists because
15 Plaintiff's counsel is located in San Diego California and can meaningfully
16 participate in the Case Management Conference and Order to Show Cause via
17 telephone. As set forth in the accompanying declaration of Joshua B. Swigart, this
18 case was dismissed and should have been properly dismissed before the initial
19 scheduled case management conference.

1 DECLARATION OF PLAINTIFF'S COUNSEL,

2 1. I am one of the attorneys for the Plaintiffs in this action. I submit this
3 declaration in support of Plaintiffs' Request for Telephonic Appearance
4 and in response to the Court's Order to Show Cause. I am licensed to
5 practice law before this court and all California State and federal courts.
6 If called as a witness, I would competently testify to the matters herein
7 from personal knowledge.

8 2. On October 15, 2007, the case was filed. In response, the Court
9 scheduled a Case Management Conference to be held on January 25,
10 2008. Prior to the Case Management Conference Plaintiff's counsel
11 made numerous attempts to serve the defendant, Patrick M. Corbett, and
12 those attempts were unsuccessful.

13 3. After repeated attempts to serve the Defendant, an investigation was
14 conducted and it was determined that the defendant is no longer in
15 business. As a result, a decision was made to save expenses and time by
16 dismissing this matter with prejudice until the entity could be located, if
17 ever.

18 4. I prepared the dismissal for this action in late December and fully
19 intended on filing the dismissal long before the date set for the case
20 management conference. I advised my law partner, Robert L. Hyde, of
21 this at that time.

22 5. Beginning January 1, 2008 my firm switched calendaring systems due to
23 a new computer operating system. Great care was taken to assure that
24 all upcoming dates and deadlines were transferred properly. These
25 entries numbered in the hundreds.

26 6. While transferring court dates to the new calendar, Mr. Hyde did not
27 enter the data for this matter because, based on my previous
28 conversation with him, he assumed the case had been dismissed. As a

1 result, the deadlines in this matter were not transferred over to the new
2 calendaring system. Subsequently, this office failed to note the
3 scheduled Case Management Conference set by the Court.

4 7. I apologize to the Court for not filing the dismissal of this matter prior to
5 the scheduled Case Management Conference. I hope that the filing of
6 the dismissal for this action on the same day as the scheduled Case
7 Management Conference, the day we realized our error, did not
8 inconvenience the Court in any way.

9 8. Our office has had other actions in front of the Court in the past, and we
10 have always appeared without incident. The Court can be assured this
11 failure on our part was not intended to inconvenience the Court or
12 demonstrate any lack of respect for its time.

13 9. I am more than willing to provide the Court additional explanation into
14 the facts of this matter, if requested. I would, respectfully request that if
15 an appearance is required on February 15, 2008, I be allowed to appear
16 telephonically, as my office is located in San Diego, California.

17
18 I declare the forgoing under the penalty of perjury under the laws of the State of
19 California.

20 Dated: February 8, 2008

HYDE & SWIGART

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22 By: /s/ Joshua B. Swigart
23 Joshua B. Swigart
24 Attorney for Plaintiff

ORDER

Good cause being shown, it is hereby ordered that Plaintiff's counsel be permitted to appear at the Case Management Conference on February 15, 2008 by telephone.

Dated: , 2008

HON. JOSEPH C. SPERO
UNITED STATES MAGISTRATE JUDGE